

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Hubert P. and Joan A. Schreurs

94-02099

Name of Respondents

Merrill Lynch, Pierce, Fenner & Smith, Inc.
Gary Schmidt
Brian D. Fylak

CASE SUMMARY

In a claim filed with the National Association of Securities Dealers, Inc. on June 3, 1994, Claimants Hubert P. and Joan A. Schreurs, who appeared Pro Se, alleged that Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc., Gary Schmidt and Brian D. Fylak wrongfully and negligently purchased 1000 shares of S3, Inc. at \$10.50 per share. Claimant alleged that on February 28, 1994, he placed an order to purchase 1000 shares of S3, Inc. at \$10.50 per share. Claimant further alleged that on April 20, 1994, to his surprise, Brian Fylak notified him that based on a "Good Till Canceled" order 1000 shares of S3, Inc. at \$10.50 per share was purchased on April 19, 1994. Claimant alleged that this came as a surprise to him because he had never received a "Good Till Canceled" notice. Claimant contended that it is always common procedure to receive a "Good Till Canceled" notice and if not, the order is canceled at the end of the trading day or which it was placed in this case on February 28, 1994. Claimant further contended that according to his Account Representative, Brian Fylak, he also receives a "Good Till Canceled" order and a reminder of the order every 30 days, however, he never received such an order, not in the first few days of placing the order and not 30 days later as is common practice. Claimant also alleged that on numerous occasions he asked respondents office manager to produce a copy of the "Good Till Canceled" order, however, it was never produced. Claimant contended that due to an error made by the Respondents, 1000 shares of S3, at 10.50 was wrongfully and negligently purchased causing Claimant to suffer damages and therefore, he should be compensated for his loss.

Respondents, Merrill Lynch, Pierce, Fenner & Smith, Inc. & Gary Schmidt through In-house Counsel, Sean E. Campbell, Esq, maintained that Claimant ordered, approved, authorized,

participated in and ratified the acts and transactions in question. Respondent further maintained that on the same day that Claimant placed an order for S3, Inc. shares he also placed an order for 1000 shares of Altron, and the 1000 shares of Altron were canceled pursuant to claimant's request. Respondent maintained that if claimant would have requested a cancel of the order to buy S3, Inc. shares it would have been done along with the canceled order for the Altron shares, however, such an order was never given. Respondent further maintained that claimant had full control of his investment decisions and any loss suffered was due to claimant decisions, and therefore, the case should be dismissed.

Respondent Brian Fylak, who appeared Pro Se, mentioned that he committed no wrongdoing, since he assumed that Claimant's "Good Till Canceled" order was automatically canceled after 30 days and that the Respondent firm's wire operator in the Freehold office was to blame for this trade not being properly canceled. Respondent Brian Fylak contended that it is his opinion that the firm should assume full responsibility for the Claimant's loss and any claims against him should be dismissed.

RELIEF REQUESTED

Claimants Hubert P. and Joan A Schreurs requested \$3,360.99 in actual damages.

Respondents Merrill Lynch, Pierce, Fenner & Smith, Inc. & Gary Schmidt requested that the claims of Claimants be dismissed.

Respondent Brain Fylak requested that the claims of the Claimants be dismissed.

AWARD

Pursuant to Section 13 of the NASD, Inc. Code of Arbitration Procedure a single Public Arbitrator, Marc L. Ripp, Esq, was selected to review the matter in controversy between the parties set forth in submissions to Arbitration signed by the Claimants on May 27, 1994 and by the Respondent Brian Fylak on August 8, 1994, by Respondent Merrill Lynch on October 25, 1994, by Respondent Gary Schmidt on October 26, 1994.

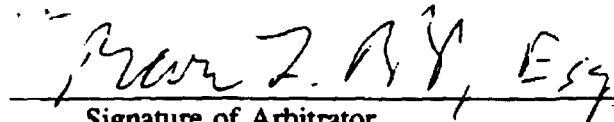
And, the Arbitrator, having considered the proof of the parties, has decided and determined in full and final resolution of the issues submitted for determination as follows:

1. Respondent Merrill Lynch, Pierce, Fenner & Smith Inc., is liable and shall pay to Claimants Hubert P. and Joan Schreurs \$3,360.99 in actual damages.

2. The claims of the Claimants Hubert P. and Joan A. Schreurs against Respondents Gary Schmidt and Brian D. Fylak are dismissed in their entirety.
3. The parties shall bear their respective costs.
4. The \$125.00 filing fee previously deposited with the National Association of Securities Dealers, Inc. by the Claimants shall be retained by the NASD, Inc.

AFFIRMATION

I, Marc L. Ripp, Esq., do hereby affirm upon my oath as arbitrator that I am the individual described herein and who executed this instrument which is my oath and award.



Signature of Arbitrator

DATE OF DECISION: April 18, 1995